



Suite 2200  
1201 Third Avenue  
Seattle, WA 98101-3045

**John E. Keegan**  
206.757.8074 tel  
206.757.7074 fax

johnkeegan@dwt.com

August 25, 2009

***Delivered by Hand***

Ms. Catherine Moore  
City Clerk  
Seattle City Hall  
600 4<sup>th</sup> Avenue, 3<sup>rd</sup> Floor  
Seattle, WA 98124

FILED  
CITY OF SEATTLE  
AUG 25 PM 3:38  
CITY CLERK

Re: Seattle Children's Hospital Appeal, No. CF 308884

Dear Ms. Moore:

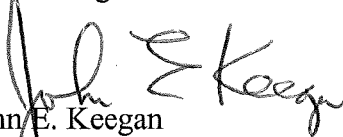
On behalf of Seattle Children's Hospital, we are submitting the executed original of Seattle Children's Appeal of the Examiner's Recommendation dated August 11, 2009.

Please distribute this in accordance with the Council's rules for appeals made pursuant to SMC 23.76.054.

Thank you for your consideration.

Sincerely yours,

Davis Wright Tremaine LLP

  
John E. Keegan

JEK:mmh

cc: Seattle Children's Hospital

Enclosure

DWT 13295953v1 0017722-000210

Anchorage  
Bellevue  
Los Angeles

New York  
Portland  
San Francisco

Seattle  
Shanghai  
Washington, D.C.

www.dwt.com

FILED  
CITY OF SEATTLE  
2009 AUG 25 PM 3:38  
CITY CLERK

BEFORE THE SEATTLE CITY COUNCIL

In the Matter of the Application of )  
SEATTLE CHILDREN'S HOSPITAL ) No. CF 308884  
For approval of a Major Institution Master Plan ) SEATTLE CHILDREN'S  
APPEAL OF EXAMINER'S  
RECOMMENDATION

I. INTRODUCTION AND SUMMARY

Seattle Children's Hospital, a Washington nonprofit organization ("Children's"), brings this Appeal to the Seattle City Council, in accordance with the provisions of Seattle Municipal Code (SMC) 23.76.054, to state its objections to Hearing Examiner Sue Tanner's Findings and Recommendation in this matter dated August 11, 2009 (the "Recommendation" or "Examiner Recommendation"). Children's is the applicant for the Major Institution Master Plan ("MIMP") at issue and, therefore, is "substantially affected by or interested in the Hearing Examiner's recommendation." See SMC 23.76.054.A.

The very short version of Children's Master Plan journey to the Council is this. Since 1953, Children's only had 21 acres to work with. This piece of ground was on the highest part of the hill and surrounded by residences on four sides, with a single entry-way to its campus from Sand Point Way NE. When it had used up its allowed floor area from

1 its 1994 Master Plan, Children's only option was to go higher on its 21 acre site. That is  
2 what Children's originally proposed when it commenced its new Master Plan process in  
3 the spring of 2007 – 240 foot tall bed wings that were later reduced to proposed 160 foot  
4 tall bed wings on top of the hill. Then entered the leadership of the Laurelon Terrace  
5 Condominium, exploring the idea of whether Children's would be interested in purchasing  
6 its 6.75 acre parcel and moving down the hill so it would have more frontage on Sand  
7 Point Way and more room to grow away from residential areas.

8 For a negotiated price of \$93 million (Ex. 24), Children's obtained the right to  
9 purchase the entire Laurelon Terrace site so that it can expand its campus at an elevation  
10 which is 106 feet lower than the highest ground on its existing campus. Ex. 81, Slide 8.  
11 By moving the bulk of its Master Plan west to the Laurelon site, Children's can build its  
12 new Master Plan buildings at a lower elevation than the highest building on the existing  
13 campus, connect to the Hartmann property it owns across Sand Point Way NE, and avoid  
14 the need to develop any access to its campus from the residential neighborhood streets on  
15 its northern, eastern and southern boundaries, a result that Children's neighbors considered  
16 highly undesirable. Although the Laurelon Terrace mitigation measure will cost  
17 Children's approximately \$8.8 million for each ten foot drop in ground elevation, this  
18 dramatic measure resulted in the Citizens Advisory Committee (CAC) and Children's  
19 developing a preferred Master Plan alternative that has been blessed by a large majority of  
20 the CAC (15 members signed the majority report) and by the Director of the Department of  
21 Planning and Development (DPD).

22 However, pulling the proposed Master Plan development downhill to the Laurelon  
23 Terrace and Hartmann sites was only the platform for what Children's, CAC and DPD

1 ultimately developed. In the process that ensued, the footprint for the Master Plan was  
2 lightened both on and off the campus. CAC recommended lowering the maximum heights,  
3 even at this lower elevation, to 140' and 125'. DPD recommended upper level setbacks  
4 from the new western boundary on 40th Avenue NE of 40' and CAC recommended  
5 increasing that to 80'. Children's developed, in conjunction with DPD, and the CAC  
6 approved, a Comprehensive Transportation Plan to: reduce to 30% at full buildout the  
7 employees using SOV; fund development of an Intelligent Transportation System for the  
8 two main corridors; make capital contributions to priority City projects in these corridors;  
9 and contribute \$2 million to unfunded bicycle and pedestrian projects in the neighborhoods  
10 surrounding Children's. The CAC also recommended documentation of need for each  
11 phase of Children's development. Children's agreed to each of these additional  
12 modifications to its Master Plan.

13 Children's is bringing this Appeal because it believes that the Examiner's  
14 recommendation of denial is: (a) contrary to the provisions of the City's Major Institution  
15 Code; (b) contrary to the hard-fought and deeply considered recommendations of the CAC  
16 and the Director of the DPD; (c) based upon the erroneous notion that the "urban village"  
17 policies in the City's Comprehensive Plan trump the Major Institution Code and Major  
18 Institution policies; and (d) based upon an incomplete and highly subjective "balancing"  
19 analysis that the Major Institution Code reserves for the City Council's ultimate judgment.

20 Since April of 2007, when Children's submitted its notice of intent to prepare a  
21 Master Plan, Children's has engaged its immediate neighbors and the larger Seattle  
22 community in an extended dialogue regarding the need for expansion of its hospital  
23 facilities at 4800 Sand Point Way NE. The CAC included representation from five

1 neighborhoods, Montlake to View Ridge. For over two years, Children's, CAC and the  
2 City have provided an "open microphone" for any and all interested members of the  
3 community to speak their mind and offer ideas to improve the Plan. And they did so by  
4 the hundreds, the bulk of it favorable to Children's Master Plan.

5 The participants in this process rolled up their sleeves and went to work. It wasn't  
6 always harmonious, but it was always rigorous and transparent. This highly public process  
7 included the consideration of seven alternative configurations to best accommodate  
8 Children's bed needs, the examination of the comparative environmental impacts of each  
9 alternative, and the negotiation of many, many mitigation and modification measures to  
10 address the impacts identified. The result is a Final Master Plan that has been optimized  
11 and improved by this lengthy and formidable public process.

12 Representatives of Children's, the City's Department of Planning and  
13 Development, and the Department of Neighborhoods (DON) participated in 26 meetings of  
14 the full Citizens Advisory Committee, which was appointed by the City Council to review  
15 the evolution of Children's Master Plan. Every CAC meeting included a full opportunity  
16 for public comment. Throughout the course of nearly two years of intense topic-by-topic  
17 CAC scrutiny, development of new alternatives requested by the CAC, and numerous  
18 modifications and mitigations of the Master Plan, the CAC voted by a heavy majority to  
19 approve Alternative 7R (the preferred alternative) with a long list of conditions, almost  
20 every one of which Children's has agreed to and incorporated into the proposed Final  
21 Master Plan now before the Council.

22 In addition to its participation in the CAC process, DPD retained its own  
23 independent consultants who assisted DPD in preparing and then publishing a voluminous

1 Draft and Final Environmental Impact Statement that examined the “No Build” Alternative  
2 as well as seven different “Build Alternatives.” *See* Ex. 5 and 6. The Final EIS was twice-  
3 appealed to the City’s Hearing Examiner by the Laurelhurst Community Club (LCC) and  
4 determined to be fully adequate by the Examiner. *See* Examiner’s Findings and Decision  
5 (EIS Appeal) at 8 (August 11, 2009). Based upon the information contained in the EIS and  
6 the information and recommendations that emerged from the CAC process, the Director of  
7 the DPD has also recommended approval of Children’s Final Master Plan, with additional  
8 conditions contained in its Reports.

9 For reasons that are not consistent with the Major Institution Code and its policies,  
10 the Examiner’s Recommendation deviates from the recommendations made by the CAC  
11 (Ex. 8) and DPD (Ex. 9 and R-3). Children’s is requesting the Council to review the  
12 record before it, apply the applicable provisions and policies of the Major Institution Code,  
13 and make its own independent judgment as to whether, in balancing the public benefits of  
14 Seattle Children’s Hospital with the livability and vitality of adjacent neighborhoods,  
15 Children’s Master Plan should be approved.

16 The City Council is *not* required to give deference to the recommendations of the  
17 Hearing Examiner. Although the City Council’s decision must be “based on applicable  
18 law and supported by substantial evidence in the record” forwarded to it by the Examiner,  
19 the Council is the City’s only decision-maker and it is required to adopt its own written  
20 findings and conclusions. *See* SMC 23.76.056.A and B. It is the City Council’s findings  
21 and conclusions, not the Hearing Examiner’s, which will be given deference in any judicial  
22 appeal of the City Council’s decision. *See Development Services v. Seattle*, 138 Wn.2d  
23

1 107, 115, 979 P.2d 387 (1999) (en banc) (a case also involving a MUP Type IV decision  
2 by the Seattle City Council).

### 3 **Overview of Appeal**

4 As an appellant, Children's recognizes that it bears the burden of proving that the  
5 Examiner's Recommendation should be rejected or modified. *See* SMC 23.76.056.A.  
6 Children's has made a careful review of the Examiner's Recommendation and compared it  
7 to the evidentiary record as well as with the dictates of the Major Institution Code. In this  
8 Appeal, Children's has undertaken the burden of demonstrating why the Examiner's  
9 recommendation of denial should be rejected and her recommended approval conditions  
10 should be accepted and used by the Council as the basis for its decision to grant approval  
11 of Children's Master Plan.

12 This Appeal is divided into three parts:

13 **A. Objection to Examiner Conclusions.** There are a very limited number of  
14 Conclusions which the Examiner used to support her recommendation of denial. We  
15 believe that each one of these Conclusions consist of judgments which are either contrary  
16 to City Code and City policy or which are highly subjective and contrary to the weight of  
17 the evidence. In any event, these are judgments which the City Council, as the decision-  
18 maker for all major institution master plans, is entitled to respectfully disagree with.

19 **B. Objections and Requested Modifications of Proposed Conditions.** Even  
20 though the Examiner has recommended denial of Children's Master Plan, she has provided  
21 the City Council with a set of "Recommended Master Plan Conditions" that she asks the  
22 Council to use if it disagrees with her recommendation of denial and chooses to approve  
23 the Master Plan. In the main, these conditions are virtually the same conditions of

1 approval as those that have been recommended by the CAC, DPD and agreed to by  
2 Children's. These conditions are comprehensive and, Children's believes, go far beyond  
3 the scope of what any other major institution in Seattle has had to carry out as part of a  
4 MIMP. However, Children's is asking that five of the recommended 43 conditions be  
5 clarified and one condition deleted.

6 **C. Objections to Findings of Fact and Conclusions.** The Examiner's  
7 Recommendation includes 129 findings. Some of these findings vary moderately from the  
8 information that is in the record and others are simply unsupported by and contrary to the  
9 record. Some of these variances from the record relate to matters that played no role  
10 whatsoever in the Examiner's recommendation of denial; some are probably inadvertent;  
11 and in a few cases, these variances are substantive and Children's has called those out for  
12 the purpose of alerting the Council to their unreliability. There are also statements that are  
13 factual in nature in some of the Examiner's "Conclusions," and Children's has addressed  
14 those as well.

#### 15 **Completeness of Record**

16 Although Children's believes the Examiner ignored significant portions of the  
17 written, graphic and testimonial record in her report, the record is complete. Children's is  
18 NOT requesting that more information be added to supplement the record. The record  
19 contains encyclopedias of information, including the Draft, Final and Revised Final EIS;  
20 the CAC Final Report and Recommendation (which includes minutes of all meetings,  
21 motions made by members, and an appendix with minority reports); the Director's Final  
22 and Revised Final Analysis; 111 exhibits introduced at the Examiner's March hearings; 25  
23 additional exhibits introduced at the Examiner's July hearings; an extensive number of

1 written public comments directed at the Draft EIS and more public comments submitted to  
2 the CAC, DPD and the Examiner; and eight days of hearing before the Examiner (March 2,  
3 3, 4, 5, 6 and 10; July 14 and 15). Full opportunity was provided by the Examiner at each  
4 and every day of the hearings (at the beginning of each morning session and the beginning  
5 of each afternoon session) for comment and testimony by members of the general public.  
6 Full opportunity was also provided to representatives of DPD, LCC, and Children's for the  
7 introduction of oral testimony, exhibits and cross-examination of witnesses. There is  
8 simply no basis for the Council to remand this application back to DPD or the Examiner  
9 for further information.

## 10 **II. SPECIFIC OBJECTIONS TO** 11 **EXAMINER'S FINDINGS AND RECOMMENDATION**

### 12 **A. Objection to Examiner Conclusions Used to Justify Denial.**

#### 13 **1. The Urban Village Policies in the City's Comprehensive Plan Do** 14 **Not Trump the Major Institution Code.**

15 *Children's objects to Examiner Conclusions 40, 42, 43 and 45.*

16 The cornerstone for the Examiner's recommendation of denial is contained in her  
17 "balancing" section (pages 29-30). In Conclusions 40, 42, 43 and 45, the Examiner  
18 constructs an argument that boils down to the proposition that because Children's is  
19 located outside of an "urban village" its Master Plan cannot be approved. The Examiner's  
20 conclusions ignore the separate and quite rigorous process that has been embodied in the  
21 Major Institution Code since its adoption in 1983 to deal with all major institution  
22 development issues. *See* Testimony of Dolores Sibonga (member of City Council 1980-  
23 1991), March 2, 2009; and her written statement in Ex. 2. The Examiner's conclusions  
would create two classes of major institutions—those that happen to be located inside of an

1 urban village and those, like Children's, that are located outside of an urban village.  
2 Neither the purposes of the Major Institution Code nor the urban village policies  
3 themselves support this result.

4 The Examiner's conclusions are clearly wrong as a matter of law because:

5 (i) The Comprehensive Plan states that, "*The Plan [and its policies] will not be*  
6 *used to review applications for specific development projects* except when reference to this  
7 Comprehensive Plan is expressly required by an applicable development regulation"  
8 (Revised FEIS, Ex. R-4, at 3.7-9 and -10 emphasis added) — Children's proposed Master  
9 Plan is an application for a "specific development project" and the governing Major  
10 Institution Code, SMC 23.69, does not require or allow reference to the urban village  
11 policies;

12 (ii) In Conclusion 42, the Examiner's reasoning is exactly backwards when she  
13 notes that the "Laurelhurst area was not designated as an urban center or village" in the  
14 1990s—the pre-existing rights of major institutions to develop in accordance with the  
15 provisions of the Major Institution Code, SMC 23.69, cannot be changed or reduced except  
16 by the City Council's explicit amendment of the Major Institution Code<sup>1</sup>—the City  
17 Council chose *not* to make "urban village amendments" to the pre-existing Major  
18 Institution Code when it adopted the urban village policies in 1994 or since;

19  
20 <sup>1</sup> See, e.g., *Anderson v. Dep't of Corrections*, 159 Wn.2d 849, 858-59, 154 P.3d 220 (2007)  
21 (en banc) ("We do not favor repeal by implication, and where potentially conflicting acts  
22 can be harmonized, we construe each to maintain the integrity of the other."); *Babcock v.*  
23 *School Dist. No. 17 of Clallam Cnty.*, 57 Wn.2d 578, 580-81, 358 P.2d 547 (1961) (prior  
statute not impliedly repealed by subsequent statute unless latter was evidently intended to  
supersede prior statute, and both provisions "will be allowed to stand unless they are  
clearly inconsistent with and repugnant to each other and cannot, by fair and responsible  
construction, be reconciled and both given effect").

1 (iii) The urban village policies themselves explicitly state that major institutions  
2 shall be allowed to develop outside of urban villages if done in accordance with an  
3 approved major institution master plan (Urban Village Policy UV 39, “Accommodate  
4 growth consistent with adopted master plans for designated major institutions located  
5 throughout the City,” Revised FEIS, Ex. R-4, 3.7-12);

6 (iv) The Examiner’s Recommendation ignores the Major Institution goals and  
7 policies which recognize the significant benefits of major institutions, call for a “separate  
8 public process” to review major institution applications, and make no distinction between  
9 the growth allowed for major institutions whether located within or outside of an urban  
10 village (LUG 32 through LUG 35, LU 180 through LU 187, Revised FEIS, Ex. R-4, 3.7-21  
11 through -24);

12 (v) The Examiner’s use of the urban village policies to deny Children’s Master  
13 Plan directly contradicts DPD’s interpretation of the Major Institution Code and the role  
14 that “non-referenced” Comprehensive Plan policies play in major institution master plan  
15 decision<sup>2</sup> (Testimony of Cliff Portman and Katy Chaney, July 15, 2009; Ex. R-24).

16 **2. The Height Transitions Along 40th Avenue NE and NE 45th Are**  
17 **Fully Appropriate.**

18 *Children’s objects to Examiner Conclusions 19 and 20.*

19 The Examiner has concluded that along two boundaries of the expanded campus—  
20 40th Avenue NE (Conclusion 19) and the western 350 feet of NE 45th Street  
21 (Conclusion 20)—the transition from the height of Children’s future buildings to the height

22 <sup>2</sup> See also *City of Redmond v. Central Puget Sound Growth Management Hearings Bd.*,  
23 136 Wn. 2d 38, 46, 959 P.2d 1091 (1998) (en banc) (deference to agency’s interpretation  
of the law is appropriate “where the agency has specialized expertise in dealing with such  
issues”).

1 of the adjoining low-rise multi-family, commercial and single-family development is  
2 inadequate. These two boundaries, shown in Attachment B to this appeal constitute less  
3 than 19.5% of Children's entire campus perimeter. The block across 40th Avenue NE is  
4 zoned L-3 and NC and has the Wells Fargo Bank, the Springbrook office buildings, and six  
5 residences. The block across the portion of NE 45th Street that is directly south of the  
6 Laurelon Terrace site has six single-family residences. *See* Ex. 4, Fig. 2 and Fig. 4.

7 The Examiner's Conclusions are seriously flawed in the face of the fact that:

8 (i) They contradict the conclusions and recommendations of both the CAC and  
9 the DPD Director, both of which specifically addressed the issue of height transition in  
10 great depth<sup>3</sup> and recommended height reductions and upper level setbacks from these  
11 streets—all of which Children's has accepted—CAC Final Report, Ex. 8  
12 (Recommendation 7) and DPD Analysis, Ex. 9, pp. 45-62;

13 (ii) The transition in height across 40th Avenue NE is highly mitigated,  
14 providing a transition distance of *approximately 157 feet* from the 25' and 35' high  
15 structures west of 40th Avenue NE to any structures on Children's campus greater than 50'  
16 (Ex. 81, p. 25)—*see Attachment A* to this Appeal, which is a blow up of Ex. 4, Fig. 46;

17 (iii) The transition in height across NE 45th Street at the southwest corner of the  
18 expanded campus is also highly mitigated, providing a transition distance of *approximately*  
19 *222 feet* between the 30' single-family structures south of NE 45th Street to any structures  
20 on Children's campus greater than 50'—*see Attachment A* to this Appeal;

21  
22  
23 <sup>3</sup> *See, e.g.,* Ex. 8, § V, CAC Meeting Notes from meeting No. 5 (8/14/07), 7 (2/12/08)  
§ IV.B, 21 (1/26/09), § III.B, 22 (1/8/09), § V.B, and 23 (1/20/09), § V (CAC discussions  
of height and height transitions).

1 (iv) The transitions in height across 40th Avenue NE and NE 45th will also be  
2 supported by the proposed landscaping and street level treatment—see discussion below  
3 relating to Findings 76-77, and the graphics in Ex. 81, Slides 26-27 and 30-31—  
4 Attachment D to this Appeal.

5 **3. Children’s Reduction of Its Maximum Heights to 140’ and 125’**  
6 **Is Consistent With the Applicable Rezone Criteria.**

7 *Children’s objects to Examiner Conclusions 36, 37 and 38.*

8 Again, the Examiner totally ignored the extensive amount of work done by the  
9 CAC on the issue of MIO heights. CAC “Recommendation 7” pushed down the allowable  
10 maximum heights in the MIO 160 district to 140’ and 125’, then reduced the area of the  
11 expanded campus eligible for such heights through terracing down of height limits from  
12 the interior to the perimeter portions of the campus. Ex. 8, Recommendation 7, and  
13 minutes of CAC meetings discussing heights and height transitions (cited in footnote 2,  
14 *supra*).

15 The Examiner’s Conclusions 36, 37 and 38 are flawed for the following reasons:

16 (i) Because the majority of the proposed expansion is occurring on the lower  
17 elevations of the Laurelon Terrace site, the height of every building in the Master Plan will  
18 be lower than the elevation of the highest building on the existing campus (Ex. 81,  
19 Slide 8)—see Attachment C to this Appeal;

20 (ii) In the proposed Master Plan, no structure will be allowed at a height of 160;  
21 only 12.32% of the proposed campus will have allowed heights of 140’ and 7.43% will  
22 have allowed heights of 125’; *more than 80% of the proposed campus will have allowed*  
23 *heights of 90’ or less* (Ex. 81, p. 5)—see Attachment B to this Appeal;

1 (iii) As DPD determined in its Analysis, the proposed height limits “at the  
2 district boundary” are “compatible with those in the adjacent areas” (Ex. 9, pp. 60-61;  
3 SMC 23.34.124.C.2) the Examiner erred in comparing the “internal” MIO heights of 140’  
4 and 125’—instead of the “boundary” heights of MIO 37’ and MIO 50’—to existing  
5 development adjacent to the district boundary (Conclusion 37);

6 (iv) Again, the Examiner mistakenly invoked the “urban village” argument in  
7 Conclusion 38 (*see* Objection A.1 above);

8 (v) The Examiner misread the general rezone criteria of SMC 23.34.008.E.4 to  
9 conclude that the heights “are not consistent with the area’s existing built character” when  
10 the general rezone criteria require that rezones be consistent with a major institution master  
11 plan “or” the area’s existing built character, not both (*see* DPD Analysis, Ex. 9, p. 52); the  
12 rezones proposed here would be consistent with Children’s already adopted Master Plan  
13 and with the built character of the area, thus satisfying the applicable rezone criteria.

14 **4. Children’s Has Committed to an Exemplary and Aggressive**  
15 **Traffic Mitigation Strategy.**

16 *Children’s objects to Conclusions 25 and 44 and Finding 103.*

17 Children’s has, in conjunction with DPD, developed the most aggressive non-SOV  
18 traffic mitigation strategy of any other major institution (Ex. 86). “It’s certainly one of the  
19 strongest I’ve seen, if not the strongest.” (Testimony of John Shaw, March 6, 2009). In  
20 the most congested corridor (Montlake), in the most congested direction (southbound), and  
21 in the most congested fifteen minutes of the day in the Year 2030, Children’s traffic will  
22 only add 60 seconds in travel time (i.e., 15 minutes instead of 14 minutes) to go from  
23 Children’s campus to the south side of the Montlake Bridge. FEIS, Ex. 6, Table 3.10-5.

1 Children's will also mitigate 40-60% of its traffic impacts, an incredibly high proportion.  
2 See FEIS, Ex. 6, 3.10-68.

3 The Examiner's attempt to use traffic as a basis for denial of Children's Master  
4 Plan should be ignored by the Council because:

5 (i) Children's transportation mitigation strategy is consistent with what the  
6 Examiner acknowledges as City policy in her own Conclusion 44: "The City's general  
7 policy toward significant, unmitigatable traffic impact stresses enhancement of non-SOV  
8 travel modes that could increase the person-carrying capacity of the transportation system  
9 without necessarily increasing vehicular capacity;"

10 (ii) The Examiner is wrong in saying that Children's produces "thousands of  
11 daily trips during peak hours"—with the mitigation committed to, the FEIS concludes that  
12 Children's will produce 440 new p.m. peak trips and 540 new a.m. peak trips (Ex. 6,  
13 Table 3.10-3);<sup>4</sup>

14 (iii) The Examiner's statement that "50 percent of its employees" use the Sand  
15 Point Way/NE 45th Street/Montlake corridors is highly misleading because it omits the  
16 fact that 70% of Children's employees will be using transit, carpool, vanpool, walking,  
17 biking or other non-SOV mode of commuting at full buildout (Ex. 86);

18 (iv) Although Children's contribution to traffic will be noticeable at many  
19 affected intersections at full buildout (e.g., 7% of the pm traffic volume at Montlake/NE  
20 45th and 8% at Five Corners), with the extraordinary mitigation package that Children's  
21 has committed to, the FEIS did *not* find that there was a significant unavoidable adverse

22 <sup>4</sup> In his March 6, 2009 testimony, Mr. Kurt Gahnberg explained how with new shuttle data  
23 provided during the hearing, there would be 88 additional pm peak trips *without*  
mitigation, i.e., 690 plus 88 = 77%. This would equate to 500 p.m. peak trips with  
mitigation, i.e., 440 plus 60 = 500.

1 impact (*see* FEIS, Ex. 6, 3.10-67 and -68)—the Examiner’s Finding 103 and  
2 Conclusion 25 to the contrary are simply wrong; and

3 (v) The Sand Point Way NE/NE 45th Street/Montlake corridor are regional  
4 corridors, not a Laurelhurst neighborhood street, and, therefore, impacts to traffic in such  
5 corridors cannot be characterized as a failure to “protect the livability and vitality of  
6 adjacent neighborhoods” within the meaning of the Major Institution Code.

7 **5. Children’s Has Examined a Wide Array of Reasonable**  
8 **Alternatives.**

9 *Children’s objects to Conclusion 46 and Finding 41.*

10 The Examiner pejoratively concludes that Children’s has “avoided . . . scrutiny by  
11 not providing any alternative that would afford less than 2.4 million square feet of  
12 development area.” Children’s actively sought more scrutiny than was required for this  
13 process. Children’s provided to CAC, DPD and the Examiner a full statement of its  
14 projected bed need by the foremost medical needs analyst in the State of Washington (Jody  
15 Corona has conducted more than 400 Certificate of Need studies in Washington, Oregon,  
16 Alaska and Montana). *See* Ex. 74. Children’s also developed seven build alternatives and  
17 the FEIS examined these alternatives as well as a “no build” alternative in full accordance  
18 with the requirements of the State Environmental Policy Act, RCW 43.21C. In addition,  
19 as provided for in the Major Institution Code, Children’s showed how its Master Plan  
20 would be developed in four major phases as it moved toward full buildout at 2.4 million  
21 square feet. *See* Findings 23-26 and Ex. 4, pp. 66-69.

22 The Examiner’s Conclusion 46 is in error because:

23 (i) The Major Institution Code does not authorize or encourage the City to  
make a determination of bed need as part of the MIMP process—SMC 23.69.002.H says

1 “accommodate the changing needs of major institutions;” and SMC 23.69.030.E.13 says  
2 that a description of the “purpose of development” shall be provided “for informational  
3 purposes only” and not for “negotiation;”

4 (ii) The City has not engaged in a determination of bed need for other major  
5 medical institutions; the determination of bed need is the responsibility of the State  
6 Department of Health, RCW Ch. 70.38;

7 (iii) The Examiner determined in her ruling on the adequacy of the EIS (after  
8 appeal by LCC) that Children’s is only required to consider “reasonable alternatives,” i.e.,  
9 alternatives that would carry out the objectives of its proposal (*see* Examiner’s “Order on  
10 LCC’s Motion to Remand and Children’s Motion to Dismiss,” dated February 27, 2009, at  
11 5 (“Further, to the extent that on-site alternatives with less development square footage and  
12 height fail to feasibly attain or approximate Children’s objective, they are not reasonable  
13 and the Director was not required to consider them in the EIS.”));

14 (iv) The Examiner erred (here and in Findings 35, 36, 40) in stating that  
15 Children’s is asserting “that it should absorb the entire statewide need for specialty  
16 pediatric care” – Jody Corona’s analysis details how the distribution of pediatric beds will  
17 continue to be provided in Washington by numerous other hospitals and how Children’s  
18 projection of need is based upon its current share of pediatric beds projected forward, not  
19 more and not less (*see* Ex. 75 and 79; *also see* discussion of Findings 35, 36 and 40  
20 below); and

21 (v) In any event, the Examiner acknowledged that Children’s had demonstrated  
22 a need for an expansion to 2.4 million square feet (*see* Findings 31, 45, and Conclusion 6).  
23

1                   **6.       The Examiner's Balancing Analysis Is Fatally Flawed.**

2                   *Children's objects to Conclusions 39-46.*

3                   The Major Institution Code includes the following statement of its intent and  
4                   purpose:

5                               Balance a Major Institution's ability to change and the public  
6                               benefit derived from change with the need to protect the  
                              livability and vitality of adjacent neighborhoods.

7                   SMC 23.69.002.B.

8                   The Examiner's "balancing" analysis in Conclusions 39-46 presents only half of  
9                   the equation, focusing entirely on the impacts to the "livability and vitality of adjacent  
10                  neighborhoods." There is no mention whatsoever of Children's public benefits to the City,  
11                  the region, or to the adjacent neighborhoods. As the Examiner portrays them, these  
12                  impacts could just as well be the result of another "big box" retail center. She ignores the  
13                  fact that these impacts are for a purpose that the City honors, i.e., the provision of highly  
14                  specialized medical services by a major institution for the sickest of the sick kids in Seattle  
15                  and the region, services provided on a daily basis without regard to the ability of families  
16                  to pay. This public purpose doctrine is coincidental with the purposes in the Major  
17                  Institution Code. The Major Institution Code mandates that the City Council consider *both*  
18                  sides of the scales in deciding whether the public benefits of expanding this pediatric  
19                  hospital strike an appropriate balance against the impact to the adjacent neighborhoods.

20                  In her "balancing" analysis, the Examiner fails to even acknowledge significant  
21                  elements of the record that address Children's "public benefit derived from change," which  
22                  is the other side of the equation, including but not limited to:

- The testimony of Children's CEO, Dr. Tom Hansen, describing the severe overcrowding that is occurring regularly at the hospital and that has forced Children's to turn away kids that need inpatient surgery and other forms of specialty care; and the steps Children's has taken to decentralize by developing administrative, research and outpatient facilities in other parts of the City and region;
- The testimony of Ruth Benfield, R.N., explaining the urgent medical need to eliminate double-occupancy bedrooms;
- The vast amounts of uncompensated care that is provided by Children's for families unable to pay;
- The testimony of Dr. John Neff, who explained why the need for beds to serve kids with chronic conditions is increasing at a rate that exceeds increases in the general population;
- The testimony of Dr. Bryan King (Ex. 72), who described the woeful lack of beds in the region and the state to serve kids with potentially fatal psychiatric illnesses;
- The testimony of Jeff Hughes, Children's Manager of the Grounds, who described the benefits to Children's neighbors from the commitment to maintain customized landscaped perimeter buffers 75 feet in width for most of its boundaries abutting single-family residences, and how Children's 41% open-space far exceeds the open-space of any other major medical institution;

- Neighborhood benefits in the form of more publically accessible open space, enhanced perimeter buffers, widened sidewalks, traffic controls, bike and pedestrian improvements, and enhanced transit connectivity.

Balance, as that concept is used in the Major Institution Code, does not mean losing off space needed for projected core hospital services. The Major Institution Code also casts its measure of balance in terms of the institution's efforts to mitigate the impacts of its growth ("Permit appropriate institutional growth within boundaries *while minimizing the adverse impacts* associated with development and geographic expansion," SMC 23.69.002.A (emphasis added)). Again, this is a recognition that all growth will cause impacts<sup>5</sup>; the test is whether the institution has committed to the strongest practical package of mitigation measures consistent with fulfillment of its institutional purposes. There can be no doubt that Children's has committed to a comprehensive and effective array of mitigation measures—especially in the areas of height reduction, height transitions, perimeter landscaping and buffering, and traffic impacts—the very subjects that the Examiner has used as a basis for her recommendation of denial.<sup>6</sup>

The Examiner's "balancing" analysis in Conclusions 39-46 should be disregarded by the Council because:

- (i) it is one-sided;

<sup>5</sup> "The law does not require that all adverse impacts be eliminated; if it did, no change in land use would ever be possible." *Maranatha Mining, Inc. v. Pierce Cnty.*, 59 Wn. App. 795, 804, 801 P.2d 985 (1990) (discussing SEPA impact mitigation requirements, and citing *Cougar Mountain*, 111 Wn. 2d 742, 753, 765 P.2d 264 (1988)).

<sup>6</sup> Other policies in the Major Institution Code make no mention of balance, e.g., SMC 23.69.002.D: "Provide for the coordinated growth of major institutions through major institution conceptual master plans and the establishment of major institutions overlay zones;" SMC 23.69.002.H. "Accommodate the changing needs of major institutions, provide flexibility for development and encourage a high quality environment through modifications of use restrictions and parking requirements of the underlying zoning."

1 (ii) it is incomplete;  
2 (iii) it is contrary to the provisions of the Major Institution Code; and  
3 (iv) most important, the determination of balance is ultimately the duty and  
4 prerogative of the City Council.

5 **7. Definitions of Allowable Gross Floor Area and FAR Should Be**  
6 **Consistent With DPD's Past Practices For Other Major**  
7 **Institutions.**

8 *Children's objects to portions of Conclusions 15, 17, 18 and Conditions 1 and 2.*

9 The Examiner's Conclusions confuse the issue of "total maximum developable  
10 gross floor area" and "overall gross floor area ratio (FAR)" as those terms are used in  
11 SMC 23.69.030.E.2. She accepts in Conclusion 15 that the "public conversation  
12 concerning the proposed MIMP has proceeded" on the basis of excluding parking square  
13 footage from gross floor area, but then turns around, in Conclusion 17, and states that  
14 "only below-grade parking should be excluded from the FAR." This is a contradiction.  
15 Whether above or below-grade, parking should be excluded as developable gross floor area  
16 and from the FAR calculation. So should mechanical space, as has been done for other  
17 major medical institutions. It's space that is not usable for hospital services.

18 Children's objects to the Examiner's recommendation to include above-grade  
19 parking structures (Conclusion 17) and, apparently, mechanical space (*see* Conditions 1  
20 and 2) in the FAR calculation because:

21 (i) Children's planning throughout the Master Plan process has relied on the  
22 assumption that parking and mechanical are excluded from both the "gross floor area" and  
23 "FAR" calculation;

1 (ii) Children's expectations were reasonable because the City recently  
2 authorized even greater exclusions for another major institution, e.g., "mechanical floors,  
3 interstitial space, below grade space, parking [and] circulation areas" were excluded in the  
4 calculation of gross floor area and FAR in the Council's approval of a master plan for  
5 Swedish Medical Center First Hill Campus (*see* City Ordinance No. 121965, October 25,  
6 2005; MIMP, at 61);

7 (iii) The Examiner's approach would result in significant loss of floor area that  
8 is needed for the hospital's core services; and

9 (iv) The City Council has the authority in SMC 23.69 to set the development  
10 standards for Children's Master Plan, including exclusions from the gross floor area and  
11 FAR calculations (*see, e.g.,* SMC 23.69.030.C).

12 **B. Requested Modification of Proposed Conditions.**

13 The Examiner's extensive list of proposed approval conditions are largely the same  
14 as or consistent with the list recommended by the CAC and DPD. However, we ask that  
15 five of these conditions be revised and one stricken:

16 Condition 1: The Examiner's Condition 1 should be amended to read as follows:

17 1. Children's shall limit total development on the  
18 expanded campus to a total of 2.4 million gross square feet,  
19 excluding parking *and mechanical space*.

20 Many City Code provisions exclude parking and mechanical areas from area floor  
21 limitations on development.<sup>7</sup> Children's current MIMP excludes parking and mechanical

22 <sup>7</sup> *See, e.g.,* SMC 23.49.11.B.1.1 (downtown zone exemption for short-term parking);  
23 23.49.11.B.2 (downtown exclusion of 3½% of gross floor area "[a]s an allowance for  
mechanical equipment"); 23.47A.013.D.3-4 (commercial development standards exclusion  
of certain mechanical areas from FAR calculation in South Lake Union Urban Center);  
23.48.16.B.3.b (SM development standards excluding above-grade accessory parking from

1 (up to 3-1/2% of gross floor area) space from its developable gross floor area. *See* Ord.  
2 117319, September 26, 1994, Findings, Conclusions, and Decisions, p. 29. In the  
3 development of this proposed Master Plan through the EIS and CAC processes, Children's  
4 assumed that it would be able to exclude parking and mechanical space. (Children's  
5 initially used the broader set of exemptions from developable area that the City Council  
6 granted Swedish First Hill in its 2005 MIMP, then subsequently narrowed its exemptions  
7 to cover only "parking and mechanical space.") DPD has also recommended that  
8 developable gross floor area exclude parking and mechanical space. *See* Examiner  
9 Finding 57.

10 Condition 2. The Examiner's Condition 2 should be amended to read as follows:

11 2. The Floor Area Ratio (FAR) for the expanded campus  
12 shall not exceed 1.9, *excluding only parking and mechanical*  
*space.*

13 The Examiner has recommended an exclusion, for FAR purposes, of only "below-  
14 grade parking and rooftop mechanical equipment." This requested modification by  
15 Children's is simpler and makes the FAR calculation consistent with the gross developable  
16 square foot allowance in Condition 1. (The CAC recommended an FAR of 1.5, which  
17 would measure only developable floor space above ground, but neither DPD nor the  
18 Examiner has chosen to recommend this approach.) The total development square footage  
19 is still 2.4 million square feet even if that could be achieved at a FAR of less than 1.9.

20 Condition 6. The Examiner's recommended Condition 6, which would increase  
21 from 40 feet to 75 feet the setback along Northeast 45th Street at the southwest corner of

22 \_\_\_\_\_  
23 FAR calculation); 23.48.16.B.4 (SM exclusion of 3½% of gross floor area "as an  
allowance for mechanical equipment); 23.50.028.E.2 (industrial zone exclusion for certain  
floor areas used for accessory parking).

1 the expanded campus, should be stricken. There is no basis for requiring a 75-foot buffer  
2 here. The planned 40-foot buffer here will be fully landscaped. The proposed height  
3 district behind this buffer is an MIO-50 (*see* Ex. 81, slide 5). The record shows that  
4 existing landscaped buffers on Children's campus provide total obscurity of structures with  
5 far less than a 75-foot width (Testimony of Jeff Hughes, March 5, 2009). Extending the  
6 width of the buffer area by 35 feet will not result in any appreciable difference in  
7 mitigation. There is a 222 foot gap between the single-family houses south of NE 45th  
8 Street and the closest building on Children's campus that could be over 50 feet in height.  
9 *See Attachment A* to this Appeal.

10 Condition 8. The Examiner's recommended Condition 8 should be revised to read  
11 "expressly prohibit above-ground *structures*" instead of "above-ground development"  
12 within the setback areas. This reference is probably inadvertent on the part of the  
13 Examiner. The proposed Master Plan refers to "above-ground structure setbacks" as being  
14 coincidental with the proposed "garden edges and street frontage edges." Ex. 4, p. 78.  
15 Landscaping and pedestrian amenities are also intended for these "setback" areas as well as  
16 "below-grade structures." *Id.*

17 Condition 18. The Examiner's recommended Condition 18 should be modified to  
18 say that the TMP will be governed consistent with Director's Rule 19-2008. In addition,  
19 the "30% SOV goal" for Children's TMP should be tied to "full build out of the Master  
20 Plan." The 30% SOV goal has always been a goal to be achieved in increments, as  
21 Children's moves from its current 38% SOV mode split to the 30% goal at buildout of the  
22 Master Plan. *See* FEIS, Ex. 6, Attachment T-9, p. 2; Ex. 86 at 5 (referencing 30% drive-  
23 alone rate as 2028 goal).

1           Condition 22. The last bullet point item in the Examiner's recommended  
2 Condition 22 should be changed to say that the traffic signal at 40th Avenue Northeast will  
3 be installed and functioning "before issuance of the Phase I certificate of occupancy" not  
4 before "Phase I construction begins." That timing for the signal has been recognized in the  
5 review by CAC and DPD. *See, e.g.,* Ex. 8, § V, notes from CAC meeting No. 21 (1/6/09)  
6 § III.B.

7           **C.       Objections to Findings of Fact and Conclusions.**

8                               **Findings of Fact**

9           The following Findings of Fact ("FF") contain errors that put them at odds with the  
10 record before the Examiner. Some contain conclusions which are not fact-based and,  
11 therefore, do not belong here. By way of objection, Children's requests that the following  
12 findings be corrected or stricken, as indicated, for purposes of the Council's consideration:

13           FF 2: Put a comma instead of a semicolon after the word "pediatric" to reflect the  
14 fact that Children's has three kinds of intensive care units: neonatal, pediatric, and cardiac.  
15 Ex 4, at 14.

16           FF 24: In the second bullet, it should read "225-stall" instead of "255-stall." Ex. 4,  
17 at 66.

18           FF 35: The Examiner has erred in attributing to Children's the following: "It states  
19 that no other health care provider proposes to fill any of the need." This is a serious  
20 misrepresentation of the record. Children's bed need analysis consistent with the State  
21 Department of Health methodology, assumes that other hospitals in Washington will  
22 continue to provide their share of pediatric beds. Although Children's "planning area" for  
23 purposes of the Department of Health Certificate of Need analysis is the State of

1 Washington, this does not mean that Children's is or will be the only provider of pediatric  
2 beds in Washington. *See* Ex. 75 and 79 (the latter a pie chart showing the proportion of  
3 pediatric bed occupancy at Children's in relation to other Washington hospitals, including  
4 Swedish, Mary Bridge, Valley Medical Center, Harborview and Group Health Eastside).

5 FF 36: Strike this finding for the same reasons described under FF 35 above.

6 FF 40: Strike the phrase "or to accommodate the state's entire need for specialty  
7 pediatric care" for the same reasons described under FF 35 above.

8 FF 41: Strike the third sentence. This is a conclusion and does not belong in  
9 Findings of Fact. It is also factually incorrect. Children's Master Plan shows how its bed  
10 development would occur in Phases I, II, and III. *See* Ex. 4, p. 66, Table 1, and p. 67,  
11 Figure 47. The square footage and parking spaces associated with each phase of  
12 development are shown, so are the approximate locations of each phase. *See also* the  
13 discussion under Part A.5 above.

14 FF 51: The phrase "located outside urban growth areas" is in error. All of Seattle  
15 is in an urban growth area. The Examiner must have meant "located outside urban  
16 villages."

17 FF 57: Strike the phrase "without citation to authority." The Major Institution  
18 Code is the authority that allows the City to establish new development standards for major  
19 institutions. *See* SMC 23.69.020.B ("Development Standards for Major Institution uses  
20 . . . may be modified through adoption of a Major Institution Master Plan"). *Also see*  
21 discussions under Part A.7 and Condition 1 above.

22 FF 66: Strike this finding because it is in error. The proposed Master Plan  
23 reviewed by the Examiner allowed for no building heights of 160 feet as is reported here.

1 Pursuant to the recommendation of the CAC, Children's had already committed to heights  
2 no greater than 140 feet and 125 feet before the Master Plan ever reached the Examiner. If  
3 there was any comment criticizing building heights of 160 feet, it should have been  
4 disregarded by the Examiner as irrelevant to the actual proposal before her. There is no  
5 evidence of "strong public sentiment for reducing the 160 foot M10 height to 105 feet."  
6 That was strictly LCC's position and certain minority members of the CAC. The majority  
7 of the CAC supported the 140 foot and 125 foot heights (*see* Ex 8, § I,  
8 Recommendation 7), a fact that is unfortunately ignored in FF 66. So did the majority of  
9 public comment support a Master Plan with the 140 and 125 foot height limits.

10 FF 67: Strike the phrase "some of" in the next to last sentence of this finding.  
11 Children's has agreed to all of the CAC recommendations on height, which were stronger  
12 than the initial conditions recommended by the DPD in Ex. 9. *See* Ex. 26, Slide 28.

13 FF 76-77: The Examiner's Finding 76 overstates the conclusions of the FEIS with  
14 respect to aesthetic (height, bulk and scale) impacts. The FEIS concluded, on the basis of  
15 Viewpoints 2, 7 and 8, that "all Build Alternatives" would create significant adverse  
16 impacts from Sand Point Way NE. *See* FEIS, Ex. 6, p. 3.9-14. The FEIS did not  
17 characterize as significant the view impacts from any other location. (The viewpoint photo  
18 collage is in Appendix C of the FEIS, Ex. 6.) Reasonable persons can disagree over  
19 aesthetic impacts, as it is probably the most subjective of all impacts. Children's believes,  
20 based upon a solid track record of landscaping and design excellence, that aesthetic  
21 impacts that affect a handful of houses (for the two perimeter areas addressed by the  
22 Examiner, there are a total of twelve affected residences), even if significant, can be  
23 addressed in an aesthetically pleasing way and should not be used as a basis for a decision

1 to deny a much-needed pediatric hospital expansion. A hospital can't be hidden from  
2 everyone. Denial on this basis would not be balance. The Examiner ignores the fact that  
3 the hospital facilities that would be constructed in the preferred alternative on the lower  
4 elevations of the Laurelon Terrace site will *not* be seen from hundreds, if not thousands, of  
5 other residences in the area because of the extraordinary mitigation measures included in  
6 this Master Plan.

7 Children's also believes that these simple massing studies that are reflected in the  
8 simulated photo collages in the FEIS appear crude and overstate the actual impacts of its  
9 proposed future campus for several reasons. The simulated building blocks are computer-  
10 generated, and without refined architectural treatment such as façade modulation, stepping,  
11 texture, and other design features to soften their appearance. Children's has committed to  
12 developing Design Guidelines for its Master Plan that will be reviewed by the Seattle  
13 Design Commission and approved by DPD. *See* Examiner's proposed Condition 14. In  
14 the absence of such a condition, major institutions are not required to go through design  
15 review. These simulated photos were not intended to show the full landscaping, screening,  
16 and street level treatment that is proposed by Children's. For an example of such treatment  
17 for the streetscapes on Sand Point Way NE, 40th Avenue NE, and NE 45th Street, *see* the  
18 graphics in Ex. 81, Slides 17-18, 26-27, and 30-31 – Attachment D to this Appeal.

19 FF 83: At the end of the second sentence, it should read "reduce that number to  
20 30% *at full buildout of the Master Plan*." Children's proposed reduction of its employee  
21 SOV percentage from the current 38% to 30% will occur in 2% increments with each  
22 phase of development. *See* FEIS, Ex. 6, Attachment T-9, p. 2.

1           FF 85: This finding runs together and, therefore, confuses two subjects: vehicle  
2 entrances on NE 45th and 50th Streets; and pedestrian and bicycle entrances. As corrected  
3 to match the record, it should read in its entirety as follows:

4           The CAC supported the enhanced TMP and recommended  
5 an additional provision restricting vehicle entrances on  
6 Northeast 45th and 50th Streets to service and emergency  
7 access only for the life of the MIMP. Children's will work  
8 with the standing advisory committee to develop additional  
9 pedestrian and bicycle-only perimeter access points and  
10 designated pedestrian and bicycle routes through the campus  
11 to allow efficient connection to the Burke Gilman trail.  
12 Children's agreed to these additions, subject to patient  
13 privacy needs and hospital security.

14 Ex. 4, p. 19, ¶ 4.

15           FF 86: The second sentence should be corrected to say "440" instead of "250" new  
16 PM peak hour trips. *See* FEIS, Ex. 6, Table 3.10-3.

17           FF 88: The second sentence of this finding should be corrected to add the phrase  
18 "with or without Children's expansion" after the words "LOS F." *See* FEIS, Ex. 6,  
19 3.10-17.

20           FF 89: This finding totally garbles the traffic analysis presented in the FEIS.  
21 Delays at individual intersections would not be increased "by several minutes" as this  
22 finding implies. The traffic analysis in the EIS calculated "travel times" across the entirety  
23 of the two main corridors that serve Children's: Sand Point Way NE to the Montlake  
Bridge and NE 45th Street to I-5. The changes in travel times from "no build" to full  
buildout of the Master Plan with the enhanced Transportation Management Program are  
these:

Children's to Roanoke via Sand Point Way/Montlake NB: 0 minutes;

Children's to Roanoke via Sand Point Way/Montlake SB: 1 minute;

1 Children's to I-5 via Sand Point Way/NE 45th Street WB: 1 minute;

2 Children's to I-5 via Sand Point Way/NE 45th Street EB: 2 minutes.

3 *See* FEIS, Ex. 6, Table 3.10-5.

4 These increases in travel time across an entire corridor are within the range of  
5 reasonable.

6 FF 93: In the second sentence, it should say that "Children's proposes under the  
7 preferred alternative to relocate *shuttle and* transit stops, etc." *See* Ex. 86, p. 17.

8 FF 95: In the second sentence of this finding, delete the word "staff" in reference  
9 to the parking entrance. This entry from 40th Avenue Northeast is a general entrance, for  
10 patients and visitors as well. *See* Ex. 4, p. 44.

11 FF 100: This finding is wrong. The Transpo Group was the City's, not Children's,  
12 consulting engineer. The first sentence should read "*DPD's* consulting transportation  
13 engineer." The last sentence should read: "Consequently, neither the DPD Director nor  
14 Children's agreed with the CAC recommendation on this point." *See* Ex. 26, Slide 35.

15 FF 101: There are 2,182 existing parking spaces currently provided by Children's.  
16 The *increase* in parking spaces in the last sentence should read "1, 418" and not "2,182."  
17 *See* Ex. FEIS, Ex. 6, p. 3.10-31.

18 FF 103: This finding contains a serious error, an error that is later used by the  
19 Examiner to support her "balancing" analysis in Conclusion 44. The last sentence, which  
20 says that "The FEIS concludes that significant, unmitigated [traffic] impacts would  
21 remain" is wrong. The Draft EIS contained a finding similar to this, but as a result of the  
22 extensive traffic mitigation proposed by Children's in its "Comprehensive Transportation  
23 Plan" (Ex. 86), which was analyzed for the first time in the Final EIS, DPD struck the old

1 finding in the FEIS. *See* Ex. 6, pp. 3.10-67 to -68. The Council cannot rely upon this  
2 finding in the Examiner's Recommendation.

3 FF 113: The Office of Housing did *not* say that the "replacement housing  
4 obligation" for Children's should be "\$50,000" per unit being demolished. They said that,  
5 in their experience, the Office of Housing has provided an average of 25% of the  
6 development cost of housing projects that the City has assisted; for them, this has averaged  
7 about \$50,000 per unit. Testimony of Adrienne Quinn, July 14, 2009; Ex. R-4, p. 3.8-13.  
8 The Director of the Office of Housing was unequivocal in her testimony that the \$5 million  
9 contribution committed to by Children's in her recommended Memorandum of Agreement  
10 would quite adequately allow for the replacement of the 136 Laurelon Terrace  
11 condominium units displaced by the expanded Children's campus. *See* Ex. R-6. Mr. Hal  
12 Ferris, a private housing developer and consultant who is very experienced with the  
13 development of affordable housing, also testified that with the competitive process that has  
14 been proposed by the Office of Housing in the Memorandum of Agreement (R-6), the  
15 \$5 million contribution may very well support the construction of more than 136  
16 replacement units. Testimony of July 14; Ex. R-11 and R-12.

17 FF 116: This finding should be stricken and ignored for the reasons described with  
18 respect to FF 113 above. This is not "the formula suggested by the Office of Housing."

19 FF 124: The last sentence should read "apartments" and not "condominium."  
20 Laurelon Terrace was not converted to condominiums until much later.

21 FF 125: The 1994 Children's MIMP approved by the City Council allowed  
22 262,630 square feet of new development (excluding parking and mechanical), not "22,000  
23 square feet" as stated here. *See* FEIS, Ex. 6, pp. 2-13.



1 Hartmann were left out of Children's MIMP boundaries. Contrary to the last sentence of  
2 this Conclusion, this issue was explored by the CAC. *See, e.g.,* Ex. 8, § V, minutes of  
3 CAC meetings No. 18 (11/12/08), § II.B (discussing proposed transportation hub with  
4 respect to Hartmann property) and 20 (12/16/08), § II (discussing Burke-Gilman  
5 connection).

6 Conclusions 15 and 17: These erroneous Conclusions are addressed in Part A.7  
7 above.

8 Conclusions 19 and 20: These erroneous Conclusions are addressed in Part A.2  
9 above.

10 Conclusion 32: The first sentence of this Conclusion is wrong. The Office of  
11 Housing did *not* propose a "formula" of \$50,000 per unit of replacement housing (*see*  
12 discussion of Finding 113 above). Although the Director of the Office of Housing  
13 considered Children's commitment to pay \$93 million to the Laurelon Terrace owners to  
14 be a public benefit because it will allow all 136 condominium owners to purchase  
15 replacement housing, she said that Children's \$5 million contribution is adequate to  
16 provide for the 136 units of replacement housing.

17 Conclusions 36, 37 and 38: These erroneous Conclusions are addressed in Part A.3  
18 above.

19 Conclusions 39-46: These erroneous Conclusions are addressed in Parts A.1, A.2,  
20 A.3, A.4, A.5 and A.6 above.

### 21 **III. RELIEF SOUGHT**

22 Children's respectfully requests that the City Council give equal attention to the  
23 three Recommendations before it: the Citizens Advisory Committee (Ex. 8); the Director

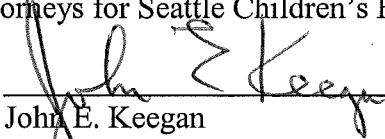
1 of DPD (Ex. 9 and R-3); and the Examiner's Recommendation. We also invite the Council  
2 to review the evidence in the record that the Examiner has ignored, particularly the  
3 evidence that shows what is really happening at Children's, why the need for specialized  
4 pediatric care has dramatically increased, and the multitude of public benefits gained by  
5 allowing Children's to fulfill its mission. The record includes a no-frills narrated tour of  
6 the existing hospital with a close-up look at the operations of each separate bed unit of the  
7 hospital (Ex. 68).

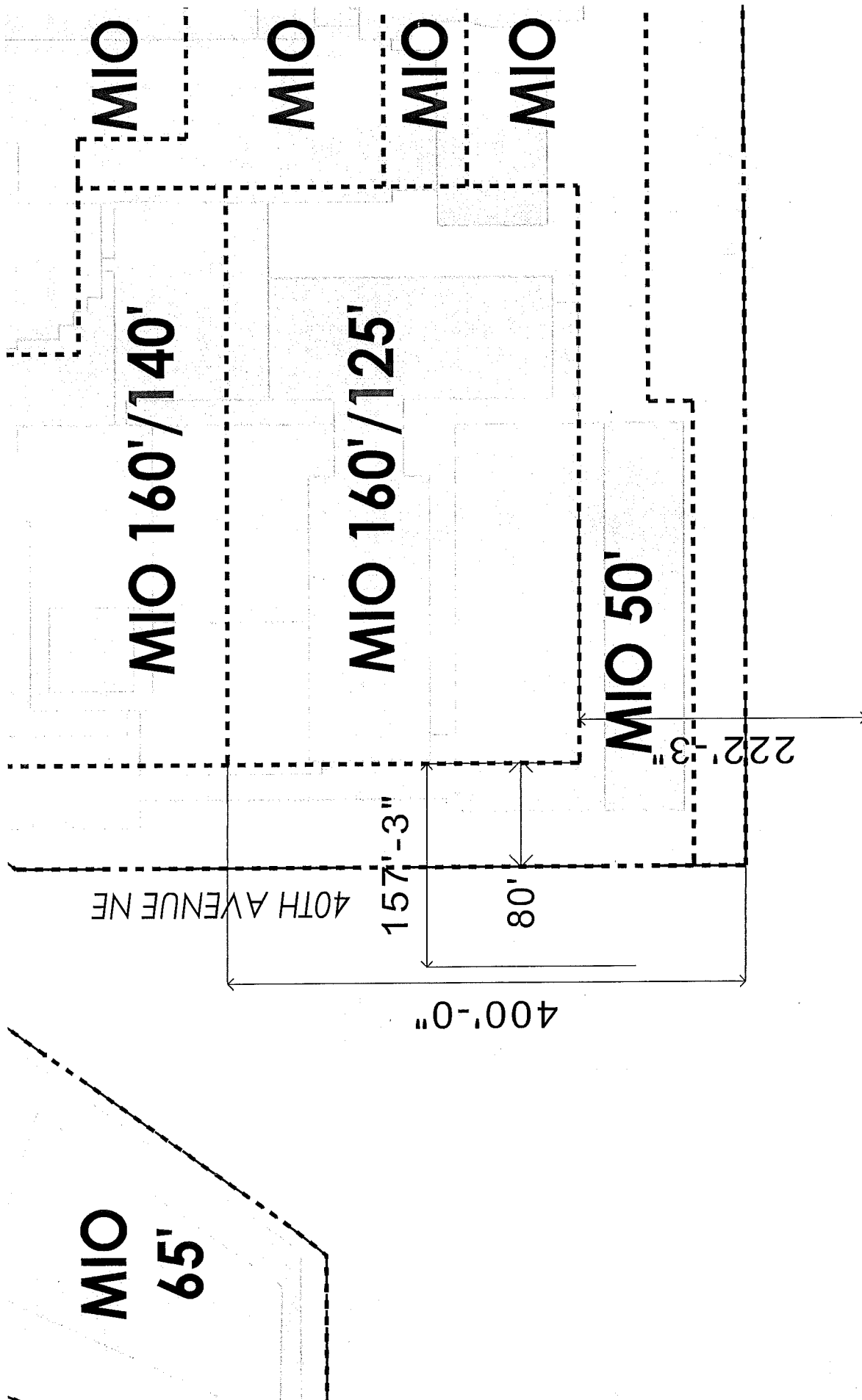
8 The Major Institution Code provides a Council goal to take final action on the  
9 Hearing Examiner's recommendation no later than three months after it receives the  
10 recommendation (in this case, August 16, 2009). SMC 23.69.032.I.1. Children's  
11 recognizes how busy the City Council is every fall, but especially this one. All we can ask  
12 is that the Council do everything practicable to reach a final decision before the end of  
13 2009. It would not be fair to Children's or to the many participants in this process to leave  
14 Children's Master Plan unresolved beyond 2009.

15 We believe that when the Council considers all of the evidence and objectively  
16 tests Children's proposal against the policies of the Major Institution Code, the Council  
17 will find that Children's Master Plan, modified as it is with aggressive mitigation measures  
18 for every potential environmental impact, should be approved with the conditions  
19 commonly recommended by the CAC, DPD and the Examiner.

20 DATED this 25th day of August, 2009.

21 Davis Wright Tremaine LLP  
22 Attorneys for Seattle Children's Hospital

23 By   
John E. Keegan  
WSBA #0279



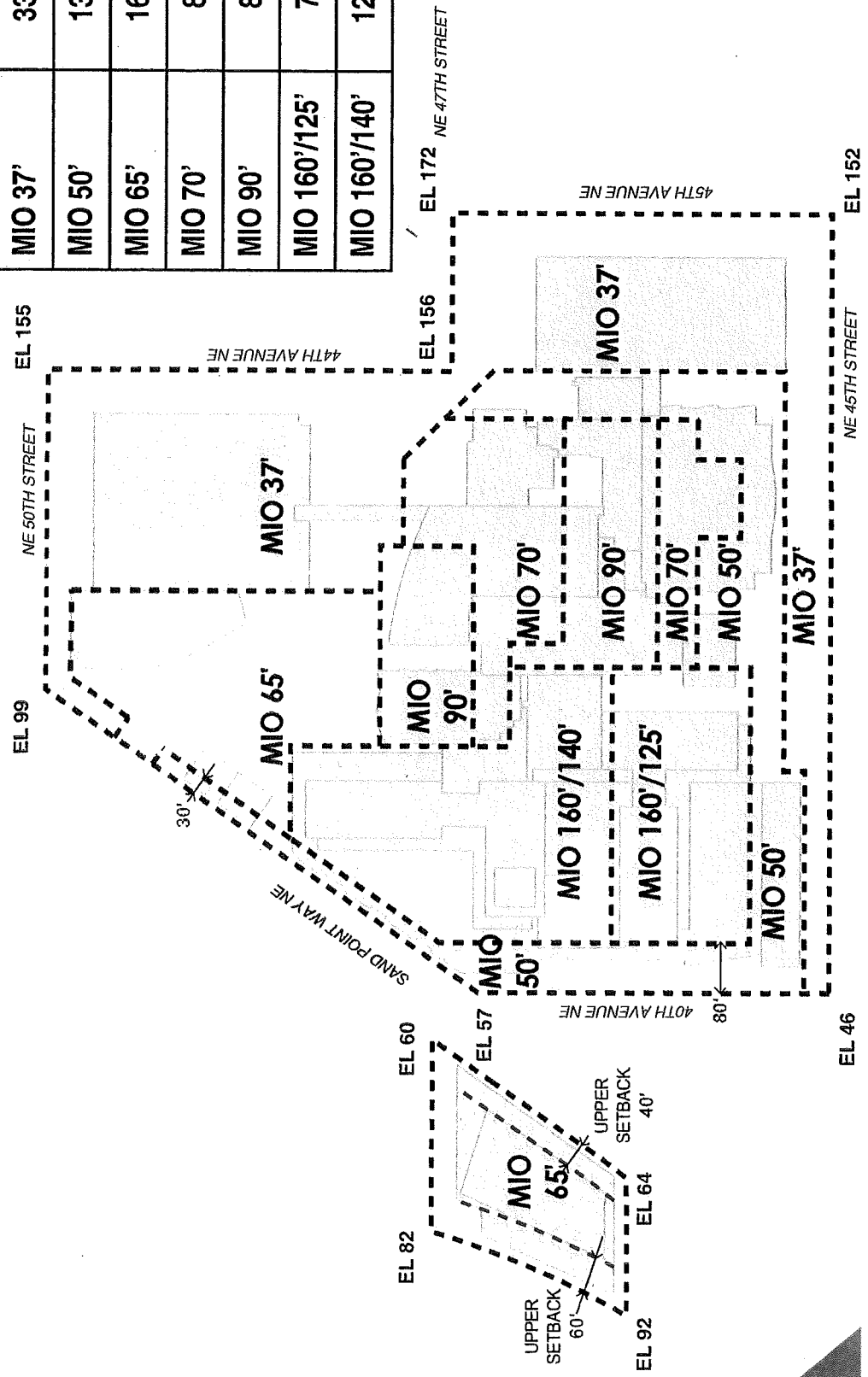
**ATTACHMENT A**  
(Blow up of Ex. 4, Fig. 46. 1"=400')



Seattle Children's  
HOSPITAL · RESEARCH · FOUNDATION

# FMP MIO Heights

MIO	% Total Area
MIO 37'	33.33%
MIO 50'	13.61%
MIO 65'	16.12%
MIO 70'	8.78%
MIO 90'	8.41%
MIO 160'/125'	7.43%
MIO 160'/140'	12.32%

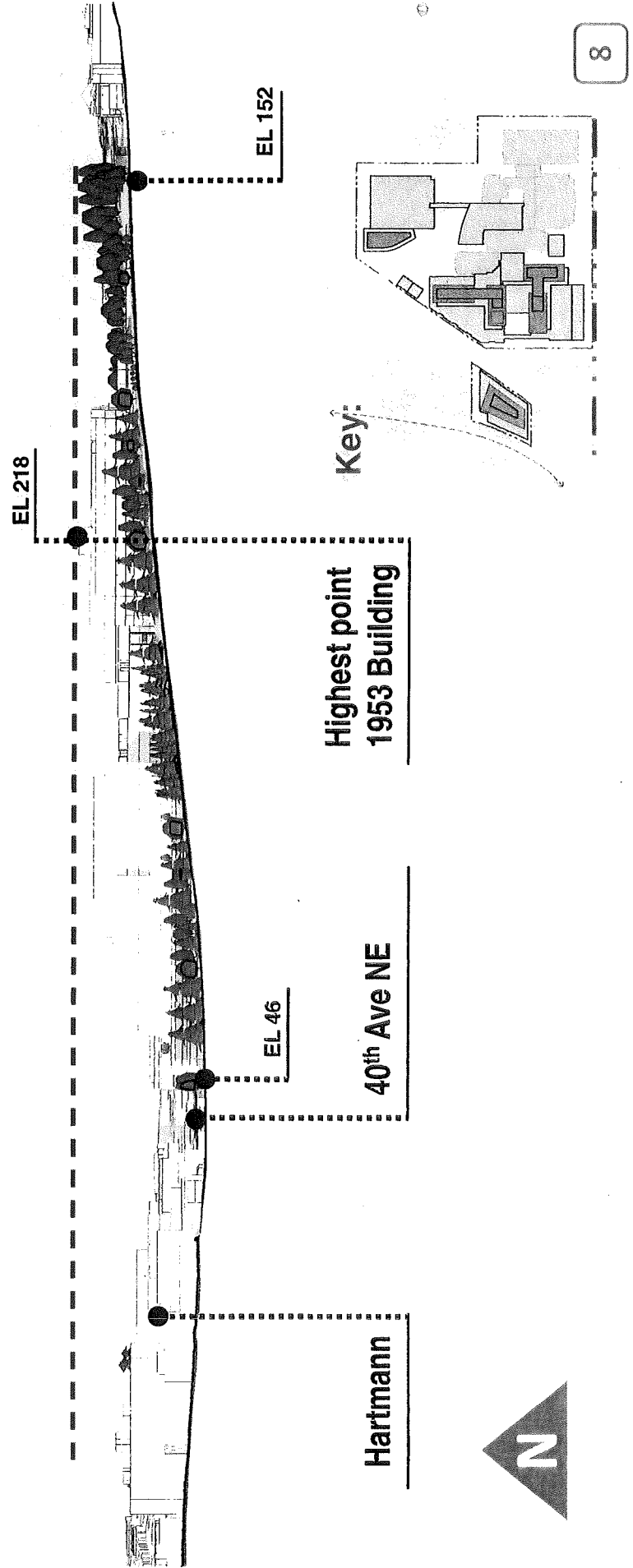




Seattle Children's  
HOSPITAL RESEARCH FOUNDATION

# Elevation: Looking North from NE 45th St

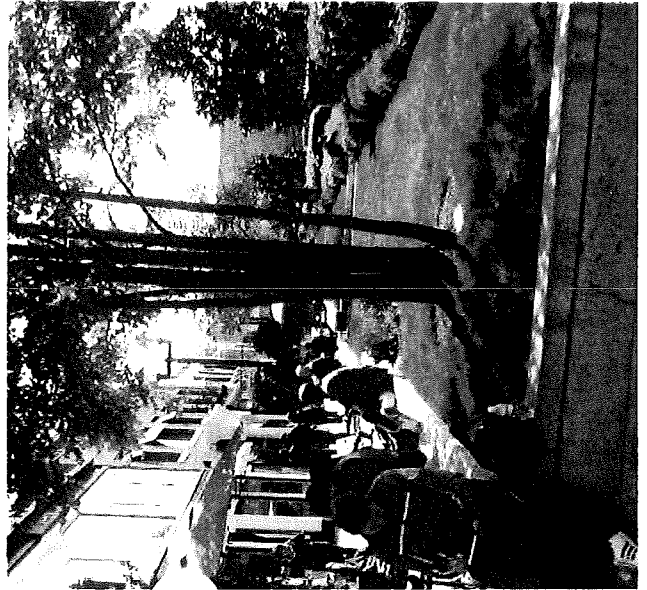
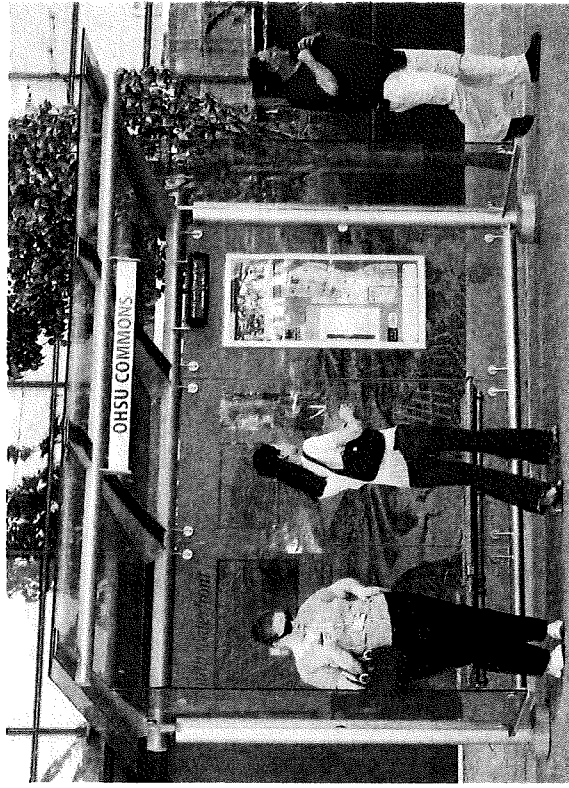
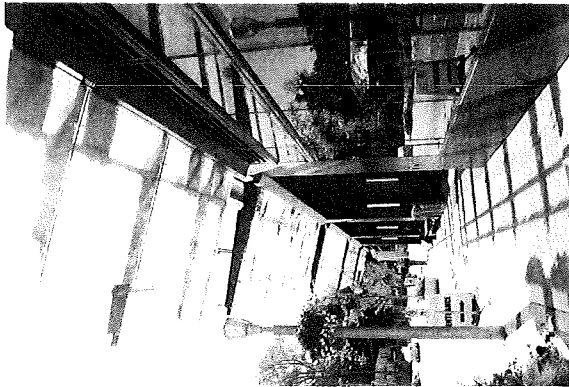
ATTACHMENT C  
(Ex. 81, Slide 8)





Seattle Children's  
HOSPITAL RESEARCH FOUNDATION

# Sand Point Way: Street Frontage



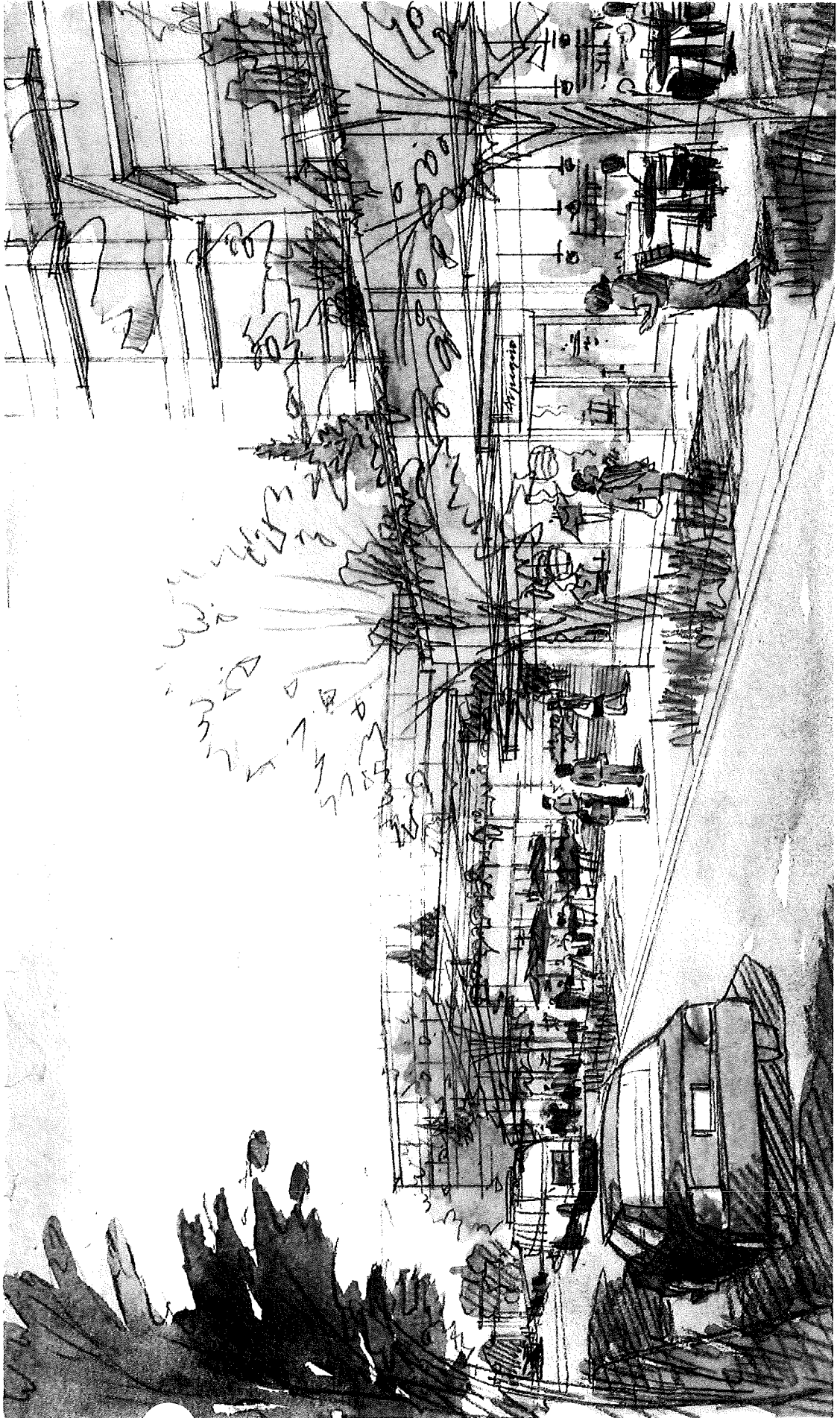
## HIGHLIGHTS

- Transit Oriented
- Pedestrian-Friendly Retail
- Urbanized Streetscape
- Portal Connector to Garden Campus
- Safe Connection to Burke-Gilman Trail
- Roof Terraces / Campus Pathway Connections
- Glazed Overhead Weather Protection
- Safe Sand Point Way Crossing / Traffic Mitigation



Seattle Children's  
HOSPITAL · RESEARCH · FOUNDATION

## Sand Point Way: Street Frontage



View looking NE on Sand Point Way

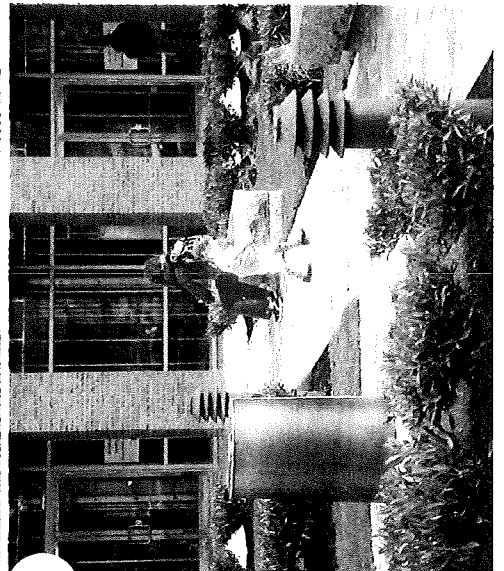
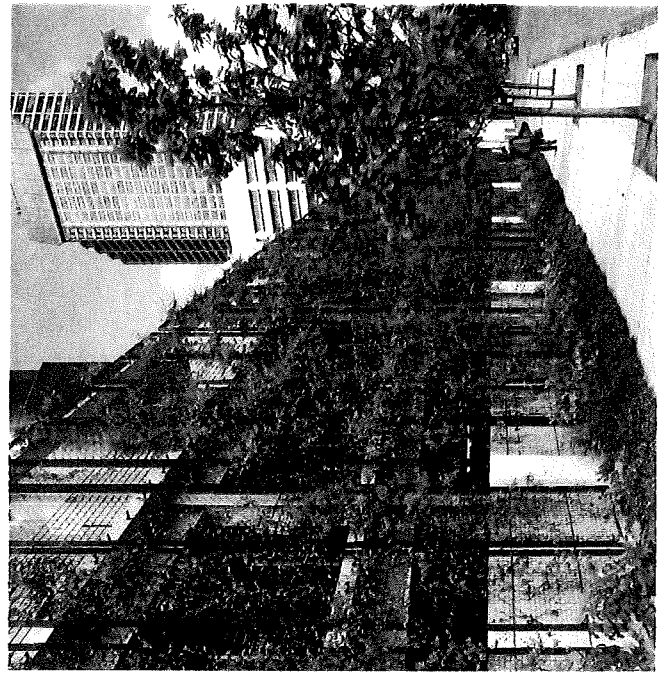
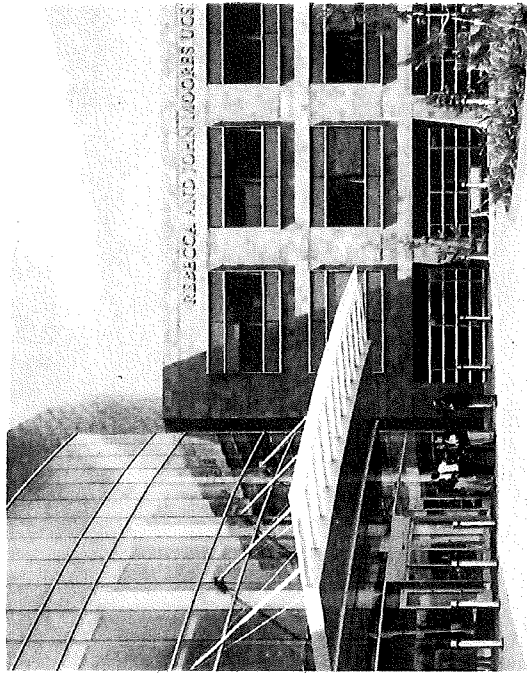


Seattle Children's  
HOSPITAL · RESEARCH · FOUNDATION

# 40th Avenue NE: Garden Edge Examples

## HIGHLIGHTS

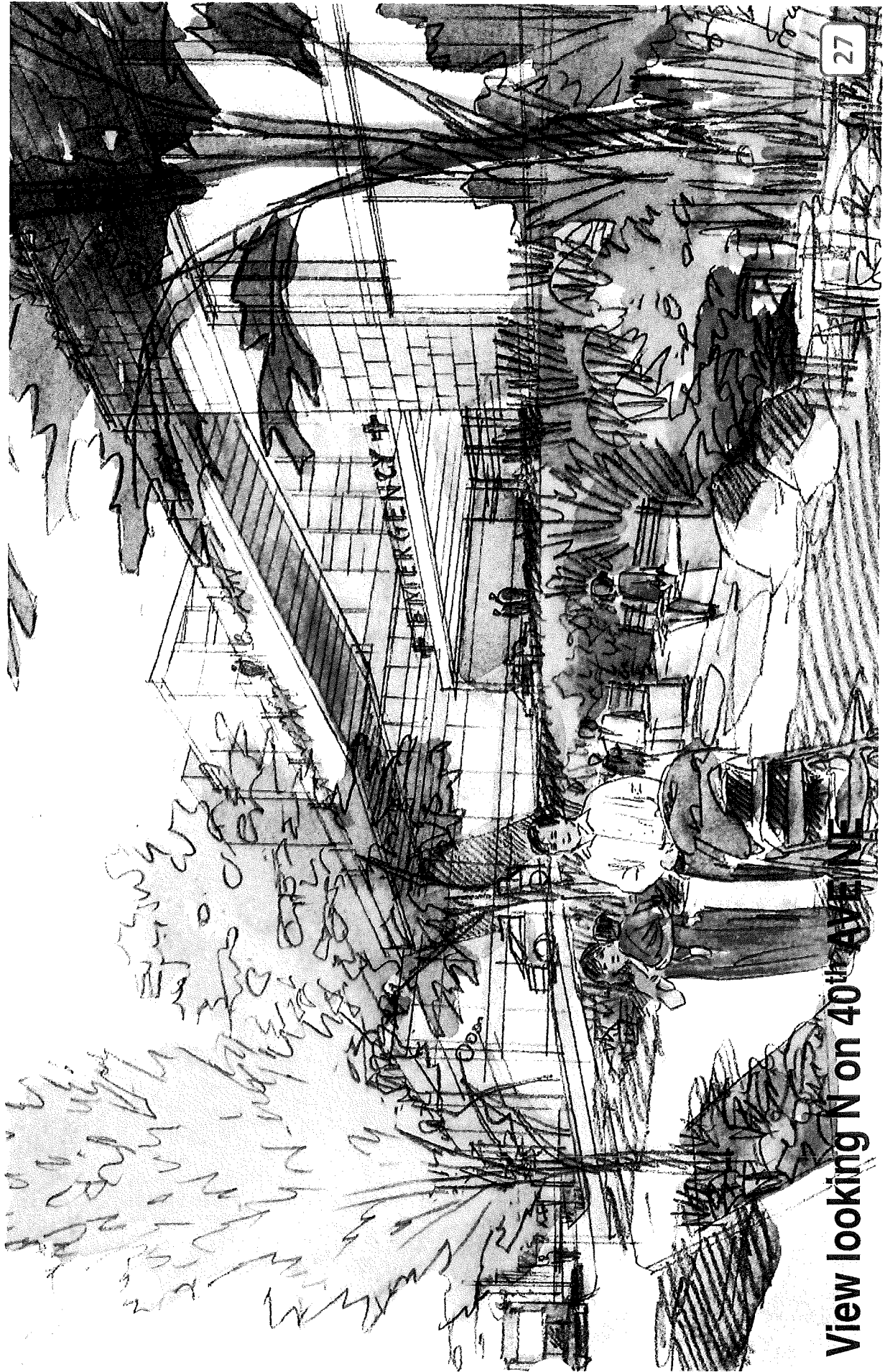
- Green Street
- Auto / Pedestrian Entrance / ER
- Parking Structure with Landscaped Screening Elements
- Building Terracing
- Pedestrian Amenities
- Landscaped Building Setbacks
- Transition from Sand Point frontage from 45<sup>th</sup> Street Buffer





seattle children's  
HOSPITAL · RESEARCH · FOUNDATION

## 40th Avenue NE: Garden Edge



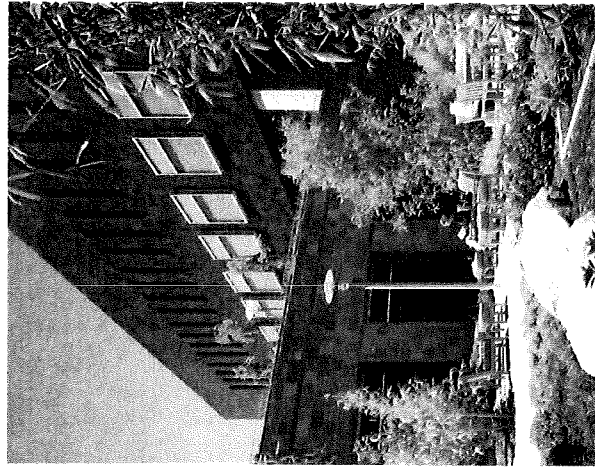
View looking N on 40<sup>th</sup> AVE NE

27



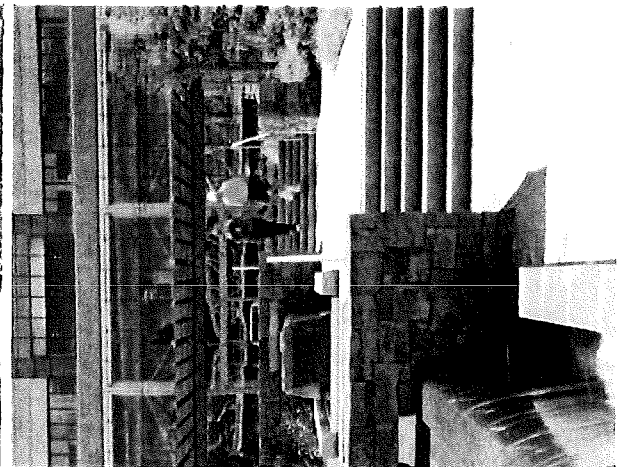
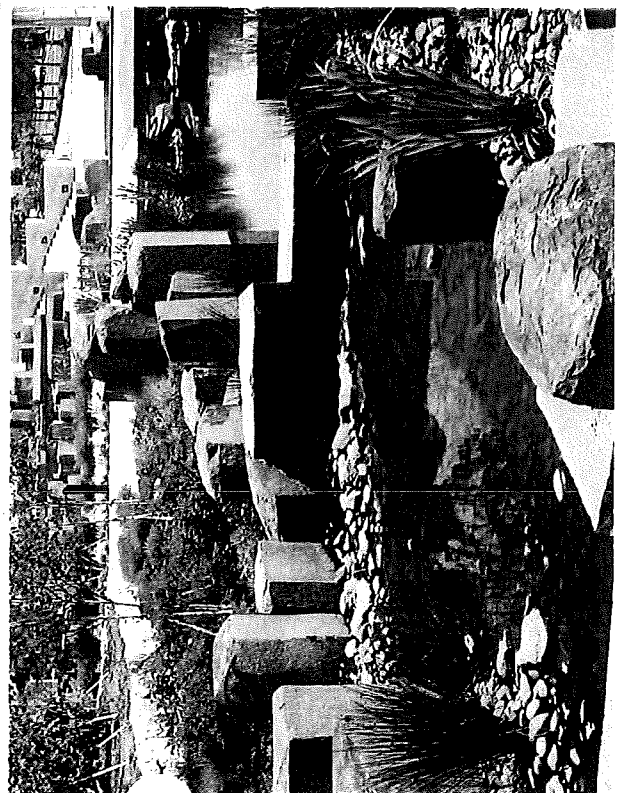
Seattle Children's  
HOSPITAL • RESEARCH • FOUNDATION

# NE 45<sup>th</sup> Street: Garden Edge Buffers



## HIGHLIGHTS

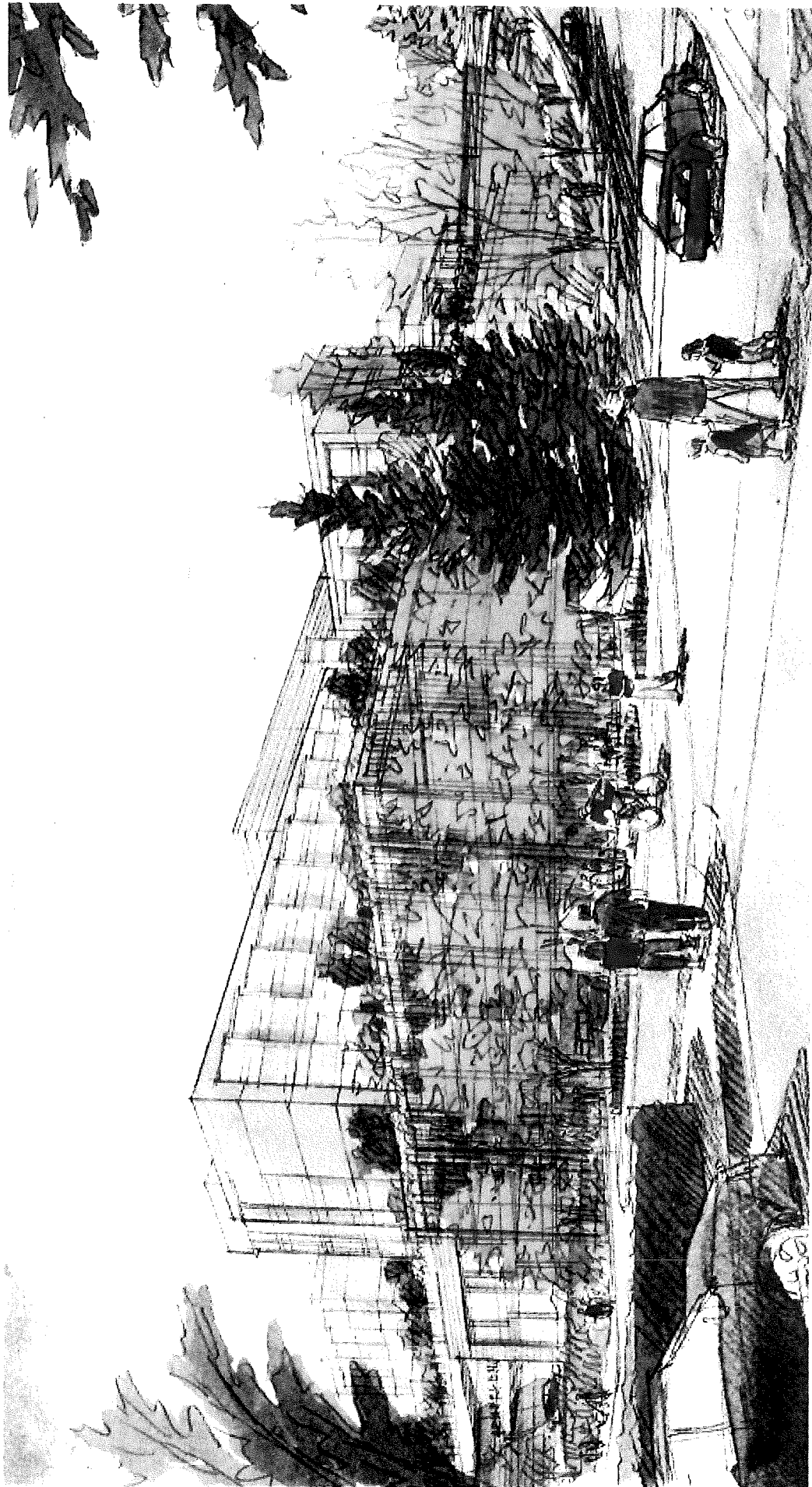
- Landscape Buffers
- Stormwater Features
- Sunny Open Space / Roof Terrace
- Pocket Parks within Landscape Buffer
- Campus Pathway Connections
- Residential Friendly Entry
- Campus Pedestrian Connections





seattle children's  
HOSPITAL · RESEARCH · FOUNDATION

## NE 45<sup>th</sup> Street: Garden Edge



View looking NE from 40<sup>th</sup> Ave NE and NE 45<sup>th</sup> Street